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OCT 28 2004

OFFICE OF PETITIONS

In re Application of	:
Fitzgerald	: DECISION REFUSING STATUS
Application No. 10/727,118	: UNDER 37 CFR 1.47(b)
Filed: December 2, 2003	:
Atty. Dkt. No.: CDPC-P01-003	:
For: ETHERNET NETWORK	:
AVAILABILITY	:

This decision is in response to the petition under 37 CFR 1.47(b), filed December 7, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed December 2, 2003 without an executed oath or declaration and naming Jeffrey Fitzgerald as sole inventor. Accordingly, a Notice to File Missing Parts of Nonprovisional Application ("Notice") was mailed March 4, 2004. The Notice required, *inter alia*, an executed oath or declaration and a surcharge.

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) a showing that such action is required to preserve the rights of the parties or to prevent irreparable damages.

The instant petition lacks requirements (1), (2), and (5) set forth above.

As to item (1), petitioner has failed to establish that the non-signing inventor received a complete copy of the application papers (specification, including claims, drawings, and oath or declaration) and thereafter refused to execute an oath or declaration. Petitioner merely states that a declaration was sent to the non-signing inventor via mail and email.

Petitioner is reminded that before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that bona fide effort has been made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor or the legal representative of the non-signing inventor. A copy of the application papers should be sent to the last known address of the nonsigning inventor or to the address of the non-signing inventor's attorney. See, MPEP 409.03(d). Any renewed petition must be accompanied by evidence that the inventor, after having been presented with the complete application papers, refused to execute the oath or declaration.

As to item (2), an acceptable oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 has not been presented. The declaration is unacceptable because it has not been executed on behalf of the non-signing inventor. The declaration should be executed by a corporate officer, such as the president, vice president, secretary, or treasurer of the assignee on behalf of and as agent for the non-signing inventor. The corporate officer's title or position must be identified in the declaration. If an officer is unavailable to execute the declaration, the declaration may be signed on behalf of the corporation by one whose proof of signing authority has been submitted to the Office, such as the corporation's attorney. The signature block of the non-signing inventor should remain unexecuted. Petitioner's attention is directed to MPEP 409.03(b) for further guidance.

Any renewed petition must be accompanied by a properly executed oath or declaration.

As to item (5), petitioner has failed to sufficiently establish a proprietary interest in the instant application. Petitioner must establish that the invention has been assigned to applicant, that the inventor has agreed in writing to assign the invention to applicant, or that applicant otherwise has sufficient proprietary interest in the subject matter to justify the filing of the application. Petitioner must submit a copy of an employment agreement between the inventor and applicant or a legal memorandum

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